declared that leased access should not impose economic hardships upon cable operators.[33] Yet under the Commission's proposed cost formula, the financial burden of preferential leased access rates for not-for-profit programmers would fall solely on cable operators, a result clearly at odds with the statutory directive that leased access not "adversely affect the operation, financial condition, or market development of the cable system."[34]

Congress did not authorize the Commission to maximize the use of leased access by not-for-profit programmers Once the Commission establishes a fair maximum rate for leased access, its role is complete — whether not-for-profit programmers choose to pay that rate or not. There is abundant evidence in the record that leased access is a risky venture for any programmer. As Congress itself noted, "[t]he cable industry has a sound argument in claiming that the economics of leased access are not conducive to its use."[35] Congress' observation is particularly true in the case of not-for-profit programmers — although such programmers typically can gain access to public, educational and governmental ("PEG") channels as a *free* outlet for their programming

Because PEG channels already offer not-for-profit programmers an outlet for reaching cable subscribers, there is no need to reserve for them a portion of commercial leased access channel capacity. In its original *Rate Order* implementing the leased access provisions of the

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33/ "The diversity envisioned by this scheme is to be brought about in a manner which is not inconsistent with the growth and development of cable systems." House Report at 48. "[T]he Committee is very sensitive to the notion that this scheme of mandated leased access not undermine the economic viability of a cable system" *Id.* at 50

34/ 47 U.S.C. § 532(c)(1).

35/ S. Rep. No. 92, 102d Cong., 1st Sess. 31 (1991).

1992 Cable Act,[36/] the Commission expressed its belief that "adequate provision has been made for not-for-profit programmers under Section 611 of the Communications Act."[37/] Indeed, public access likely represents a more attractive option than leased access for not-for-profit programmers because public access represents a *free* outlet for their programming. On the other hand, where not-for-profit companies seek channels for commercial use — *i.e.*, to generate revenue — there is no reason why cable operators should be required to subsidize such commercial use by providing leased access channels at preferential rates.

36/ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (the "1992 Cable Act")

37/ 8 FCC Rcd 5631, 5954 (1993).

CONCLUSION

The Commission's current implicit fee formula is a far better methodology to compute reasonable leased access rates than the proposed cost-based formula. Any perceived "double recovery" that the current formula may generate is *de minimis*, and the formula establishes rates that generally enable operators to recover the reasonable costs of leasing channel capacity to programmers. For the foregoing reasons, the proposals set forth in these Comments will establish a leased access ratesetting methodology that comports with Congress' intent to establish reasonable rates while ensuring that operators are not financially harmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cynthia M. Forrester, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that a copy of the foregoing "Comments of Comcast Cable Communications, Inc." was sent via hand delivery, this 15th day of May, 1996, to the following:

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